

REMARKS

This is in response to the Office Action mailed on January 9, 2009 in which claims 1-5, 10, 11 and 16-18 were rejected under 35 U.S.C. § 102(b); claims 19-21 were rejected under 35 U.S.C. § 103(a); and claims 1-5, 10, 11 and 16-21 were rejected under 35 U.S.C. § 103(a). Claim 1 has also been amended to require that the base, connector and angled support are formed from one continuous, solid sheet. Claim 22 has been added to require that the continuous sheet of claim 1 is a metal. Claim 10 has been amended to require that the base, connector and support are an integral sheet metal structure. Claim 19 has been amended to require that the base and first through third planar surfaces are formed from a continuous metal sheet. In reliance on the following remarks, the present application with pending claims 1-5, 10, 11 and 16-22 is in condition for allowance, and reconsideration and notice to that effect are respectfully requested.

Rejection of Claims 1-5, 10, 11 and 16-18 under 35 U.S.C. § 102(b)

In the Office Action, independent claims 1, 10, and 19 and dependent claims 2-5, 11 and 16-18 were rejected under 35 U.S.C. § 102(b) as being anticipated by West (U.S. Patent No. 1,061,431). According to MPEP § 2131, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)).

As amended, claim 1 requires a baking tray having a generally planar, horizontal base; a connector attached to an end of the base at a first bend where the connector and the base form an acute angle; and an angled support attached to the connector at a second bend where the support and connector form an angle less than 180 degrees. The base, connector and angled support are formed from one continuous, solid sheet and the support has at least one aperture spaced vertically from the base for inserting a stick or skewer.

West describes a baking stand with hooks D for holding toasting fork N. The baking stand is made of wire. “In carrying out the invention, a piece of wire is bent oblong shape to form

the base A, eyes B being turned on same to which are fixed uprights C and F....” Lines 43-46. The Office Action asserts that the portion extending from eye B to bend E satisfies the connector of claim 1 and the portion of upright C or F extending from bend E to an inverted peak and back down to another eye B satisfies the angled support of claim 1. Claim 1 has been amended to require a connector and an angled support formed from one continuous, solid sheet. The wire framework of the baking stand in West does not describe a connector or an angled support formed from one continuous, solid sheet. The baking stand in West is composed of multiple and separate shaped wires. Thus, the wire framework in West does not describe a base, connector and angled support formed from one continuous, solid sheet.

Therefore, West does not describe a base, connector and angled support formed from one continuous, solid sheet as required by claim 1. Because West does not describe all the elements of claim 1, West does not anticipate claim 1.

In that independent claim 1 is in condition for allowance, the rejections to claims 2-5, which depend therefrom, should be withdrawn and claims 1-5 allowed.

As amended, claim 10 requires a device for supporting food on a stick or skewer having a generally horizontal base; a connector attached to an end of the base at a first bend where the connector and the base form an acute angle; and a support forming an inverted V-shape having first and second inclined sloped sides forming an apex at an upper end where the first sloped side is attached to the connector at a second bend and slopes above the connector. The base, connector and support are an integral sheet metal structure. The device has at least one aperture on the support and spaced vertically from the base for receiving a stick or skewer with food and supporting the stick or skewer with food in a cantilevered fashion.

As described above, the wire framework of the baking stand in West does not describe a base, connector and support having an integral sheet metal structure. Therefore, West does not describe a device having a base, connector and support where the base, connector and support are an integral sheet metal structure as required by claim 10. Because West does not describe all the elements of claim 10, West does not anticipate claim 10.

In that independent claim 10 is in condition for allowance, the rejections to claims 11 and 16-18, which depend therefrom, should be withdrawn and claims 10, 11 and 16-18 allowed.

Rejection of Claims 19-21 under 35 U.S.C. § 103(a)

In the Office Action, independent claim 19 and dependent claims 20 and 21 were rejected under 35 U.S.C. § 103(a) as obvious over West. Section 706.02(j) of the MPEP provides:

To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.

Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).

As amended, claim 19 requires a baking tray comprising a continuous, solid metal sheet. The continuous, solid metal sheet includes a generally planar, horizontal base; a first planar surface where the first planar surface is attached to the base at a first bend and the first planar surface and the base form an acute angle; a second planar surface attached to the first planar surface at a second bend where the second planar surface slopes above the first planar surface; and a third planar surface attached to the second planar surface where the second and third planar surfaces form an inverted V-shape. The second planar surface has at least one aperture spaced vertically from the base and configured to receive a stick or skewer.

As described above, the wire framework of the baking stand in West does not describe a base and first through third planar surfaces formed from one continuous, solid metal sheet. The baking stand is composed of multiple and separate shaped wires. The wire framework described and illustrated in West does not suggest that solid surfaces could be used in the implementation of the baking stand rather than wire. Thus, one having ordinary skill in the art would not have modified the wire baking stand in West to create a baking tray comprising a continuous, solid metal sheet having first, second and third planar surfaces as required by claim 19.

In that independent claim 19 is in condition for allowance, the rejections to claims 20 and 21, which depend therefrom, should be withdrawn and claims 19-21 allowed.

Rejection of Claims 1-5, 10, 11 and 16-21 under 35 U.S.C. § 103(a)

In the Office Action, independent claims 1, 10, and 19 and dependent claims 2-5, 11, 16-18, 20 and 21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sculca (U.S. Patent No. 7,107,898) in view of Untiedt (U.S. Patent No. 5,390,453).

As discussed above, amended claim 1 requires a baking tray having a generally planar, horizontal base; a connector attached to an end of the base at a first bend where the connector and the base form an acute angle; and an angled support attached to the connector at a second bend where the support and connector form an angle less than 180 degrees. The base, connector and angled support are formed from one continuous, solid sheet.

Sculca describes a skewer holder. The Office Action correctly acknowledges that Sculca fails to disclose the connector required by claim 1. However, the Office Action suggests that the mesh skewer holder illustrated in FIG. 9A satisfies the remaining elements of claim 1. As discussed above, amended claim 1 requires a base, connector and angled support formed from one continuous, **solid** sheet. Sculca teaches away from using a continuous, solid sheet to form the skewer holder. The angled support (126) in Sculca contains holes 124. According to Sculca, “[d]rips pass directly through the holes 124 of the mesh.” *See* col. 6, lines 23-24. Thus, Sculca teaches away from a baking tray having a base, connector and angled support formed from one continuous, solid sheet.

To satisfy the lack of a connector, the Office Action asserts that Untiedt describes a base (18) and a connector (side wall 6) that angles upwardly from the base at an acute angle. Untiedt generally describes roofing structures. Roofing structures are not analogous to food and beverage apparatuses. Untiedt’s roofing structures are not in the field of Applicant’s endeavor and are not reasonably pertinent to the particular problem with which Applicant was concerned. Therefore, Untiedt represents non-analogous art. One having ordinary skill in the art would not have modified

the skewer holder of Sculuca based on the descriptions of Untiedt's roofing structures. Thus, one having ordinary skill in the art would not have modified Sculuca to add a connector attached to an end of the base at a first bend where the connector and the base form an acute angle.

Even if Untiedt was analogous art, it also does not describe a base, connector and angled support formed from one continuous, solid sheet nor does it suggest modification of Sculuca to use a continuous, solid sheet. Like Sculuca, Untiedt teaches away from using a continuous, solid sheet to form a baking tray. According to FIG. 2, base 18 and side wall 6 are solid yet **separate and distinct** articles. Thus, one would not modify Sculuca in view of Untiedt to create a baking tray having a base, connector and angled support formed from one continuous, solid sheet.

In that independent claim 1 is in condition for allowance, the rejections to claims 2-5, which depend therefrom, should be withdrawn and claims 1-5 allowed.

For the reasons stated above, one having ordinary skill in the art would not have modified Sculuca in view of Untiedt to add a base, connector and support having an integral sheet metal structure as required by claim 10. Also, one having ordinary skill in the art would not have modified Sculuca in view of Untiedt to create a baking tray comprising a continuous, solid metal sheet having first, second and third planar surfaces as required by claim 19.

In that independent claims 10 and 19 are in condition for allowance, the rejections to claims 11 and 16-18, which depend from claim 10, and claims 20 and 21, which depend from claim 19, should be withdrawn and claims 10, 11 and 16-21 allowed.

Conclusion

In view of the foregoing, pending claims 1-5, 10, 11 and 16-22 are in condition for allowance. Notice to that effect is respectfully requested.

The Commissioner is hereby authorized to charge any additional fee required under 37 C.F.R. 1.16 and 1.17 and credit any overpayments to Deposit Account No. 11-0982.

Respectfully submitted,

KINNEY & LANGE, P.A.

Date: March 30, 2009

By: /David R. Fairbairn/
David R. Fairbairn, Reg. No. 26,047
THE KINNEY & LANGE BUILDING
312 South Third Street
Minneapolis, MN 55415-1002
Telephone: (612) 339-1863
Fax: (612) 339-6580

MJD:elk